

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of Section 3 of the)
Cable Television Consumer Protection)
and Competition Act of 1992)
Tier Buy-Through Prohibition)

MM Docket No. 92-262

To: The Commission

REPLY COMMENTS OF COALITION OF SMALL SYSTEM OPERATORS

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Dated: January 28, 1993

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REPLY COMMENTS OF COALITION OF SMALL SYSTEM OPERATORS

The Coalition of Small System Operators 1/ hereby replies to certain of the comments filed on January 13, 1992 in the captioned proceeding.

The Small System Operators operate primarily systems serving very small, rural communities with fewer than 1,000 subscribers. The Small System Operators urge the Commission to expressly grant a blanket waiver to systems with fewer than 1,000 subscribers from the tier buy-through rules for the first ten years after the effective date of the rules based on the

1/ The Coalition of Small System Operators includes: Midcontinent Media, Inc., Galaxy Cablevision, Vantage Cable, Classic Cable, USA/MW1 Cablesystems, Inc., Buford Television, Inc., Triax Communications Corp., Douglas Communications Corp. II, Leonard Communications, Inc., Phoenix Cable, Inc. and Star Cable Associates. The Coalition, which has participated in other rulemaking proceedings related to the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act"), continues to expand. Therefore, the numbers of subscribers, systems, etc. served by these operators may be different than those supplied previously.

universal lack of full addressability among these systems, and to flexibly grant waivers to small systems after the ten-year period has expired. Small systems should be treated differently than larger ones in view of the high costs of operating systems in sparsely populated rural areas, the limited ability of these systems to recover the substantial costs for high-tech addressable equipment, and the importance of continued availability of reasonably priced cable service in these areas.

I. PROCEDURAL RULES FOR EXEMPTION AND WAIVER OF TIER BUY-THROUGH RULES

Small systems, with fewer than 1,000 subscribers, should automatically receive blanket waivers of tier buy-through restrictions until the sooner of ten years after enactment of the FCC tier buy-through rules or such time as those systems become fully addressable. A system should not be deemed to be fully addressable until the headend and every subscriber home is equipped with addressable technology.

That special treatment of small systems is necessary is even admitted by TCI, which is moving quickly to install addressable equipment in almost all of its systems. 2/ TCI states in its Comments in this proceeding that, although TCI is rapidly deploying addressable equipment in most of its systems, addressability will not be added in certain cases where "a system may be so small as to make infeasible the implementation of this plan." 3/

The suggestion made by some commenters that systems should have to file waiver requests in order to benefit from the statutory ten-year exemption from tier buy-through restrictions for systems lacking full

2/ Comments of Tele-Communications, Inc. ("TCI") at 2.

3/ Id. at 4.

addressability 4/ does not make sense. In view of the thousands of systems which lack addressability, the requirement that each file a waiver request in order to take advantage of a statutorily recognized exemption would be unduly burdensome for operators. None of the Small System Operators' 2,214 systems is fully addressable, so waiver requests would have to be filed for each. The cost per subscriber of preparing these unnecessary waiver requests would be astronomical. The flood of paper that would inundate the FCC would also unnecessarily tax the Commission's resources. Particularly for small systems operators with hundreds of headends, the unnecessary expense of preparing waiver requests should be avoided. Instead of requiring that small operators spend their resources preparing waiver requests, the Commission should impose as few administrative burdens on them as possible so that they may, among other things, eventually afford to install addressable equipment.

One commenter urges that all systems should be presumed addressable, a presumption which would be rebuttable only by filing proof of non-addressability with the franchise authority. 5/ This suggested presumption is unreasonable, especially because the Commission noted in the Notice of Proposed Rulemaking in this proceeding that only about 25 percent of all cable systems have addressable equipment. 6/ Also, involvement of franchise authorities in monitoring compliance with tier buy-through rules is neither necessary nor contemplated by the statute. Instead,

4/ See, e.g., Comments of the National Association of Telecommunications Officers and Advisors ("NATOA") at 3-4.

5/ Comments of NATOA at 8.

6/ NPRM at ¶ 4.

the Commission should administer tier buy-through rules. Another commenter's suggestion that periodic reports be filed with franchise authorities and that operators provide timetables for the accomplishment of addressability 7/ would also be extremely burdensome for small operators which may or may not ever be able to afford full addressability in their systems.

After the ten-year period has expired, a small system operator should be able to obtain a waiver from the FCC based on a showing that it would have to raise rates in order to comply with tier buy-through rules. The suggestion made by one of the commenters that no waivers are permissible after the end of the ten year period 8/ is directly contrary to the statute, which specifically contemplates waivers for whatever period the Commission deems reasonable for systems which would have to raise rates in order to comply. 9/

II. "SMALL SYSTEM" SHOULD BE DEFINED AS ONE WITH LESS THAN 1,000 SUBSCRIBERS

Several commenters favor special treatment for small systems. 10/ However, each defines "small system" differently. As outlined in the Comments filed by the Small System Operators in this proceeding, the unique costs and problems stemming from low density service areas and high construction and operation costs of systems with fewer than 1,000

7/ Comments of New Jersey Office of Cable Television at 7.

8/ Comments of NATOA at 2-3, 5.

9/ 47 U.S.C. § 543(b)(8).

10/ See, e.g., Comments of Consortium of Small System Operators at 2-3.

subscribers warrants special treatment for these small systems. For purposes of the tier buy-through rules, the definition of "small system" should not be too broad (to include systems which do not face the unique problems that justify special treatment) nor too narrow (to exclude from the special treatment systems which simply cannot afford to invest in costly addressable equipment). To this end, the Small System Operators urge adoption of a definition of "small system" that would apply only to those very small systems serving fewer than 1,000 subscribers.

Although the Small System Operators do not oppose a broader definition as suggested by some commenters (encompassing systems with up to 10,000 subscribers) 11/ it is important that the unique characteristics of systems with fewer than 1,000 subscribers not be lost in arguments for the broader exemptions. For example, density (measured in number of homes passed per mile) for most systems with fewer than 1,000 subscribers would likely be significantly lower than density for systems serving 10,000 subscribers. Similarly, small systems are less able to achieve economies of scale. The imposition of any additional administrative burdens impacts disproportionately on systems with fewer than 1,000 subscribers, which can least afford added expenses.

Other commenters suggest that "small system" be defined not only based on size of the system, but also based on independent or affiliated status. 12/ However, whether an operator of a small system happens to be affiliated with other systems, small or large, it will experience the very same problems and difficulties as an unaffiliated small system.

11/ Id. at 4, n.6

12/ Id. Comments of NATOA at 16.

The Consortium of Small System Operators, a group of independent small system operators, argues that only independently-owned systems should qualify for special consideration under the tier buy-through rules. 13/ Yet every reason the Consortium cites for its small independent systems to receive special treatment applies to affiliated small system operators as well: lower profit potential due to sparse population and higher per subscriber costs, lack of volume discounts for equipment and programming, and higher hardware and pole attachment costs because of the low density. 14/

There is no reason to penalize small systems which happen to be affiliated with other systems by categorizing them as "MSO's" and denying their eligibility for special consideration under the tier buy-through rules. Moreover, there is little danger that this definition of "small system" for purposes of the tier buy-through rules would significantly benefit large MSO's. Operation of small systems in rural areas by large MSO's is a small fraction of their operations -- in fact, they have intentionally shied away from providing service to these less profitable, low density areas.

IV. CONCLUSION

Small systems which do not have the revenues per subscriber to offset the substantial cost of addressable equipment should be given leeway

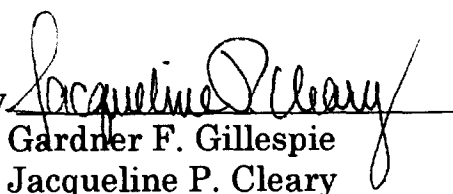
13/ Comments of Consortium of Small System Operators at 4, n.6.

14/ Id. at 3.

through automatic application of the ten-year grace period and then liberal waiver of tier buy-through rules.

Respectfully submitted,

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FOR SYSTEMS WITH FEWER THAN 1,000 SUBSCRIBERS

NAME OF OPERATOR	AVERAGE # OF SUBSCRIBERS	AVERAGE # OF HOMES PASSED PER MILE	AVERAGE # OF MILES OF PLANT	AVERAGE # OF ACTIVATED CHANNELS	AVERAGE # OF SUBSCRIBERS PER MILE	AVERAGE PENETRATION
Douglas Comm. Corp. II	191	40	8	16	24	60%
Galaxy Cablevision	396	37	19	28	20	54%
MW1/USA Cable Systems, Inc.	84	29	7	21	12	41.3%
Vantage Cable Associates, L.P.	221	45	7.23	21	30	66%
Triax Comm. Corp.	364	39	15	22	25	44%
Buford Television, Inc.	322	24	29	24	11	45.83%
Classic Cable	331	51	10	25	39	76.4%
Midcontinent Media, Inc.	240	57	5.85	16	41	72%
Star Cable Associates	429	28	32	26	13.4	47.8%
Leonard Comm., Inc.	252	40	9.6	19.9	26	65%
Phoenix Cable, Inc.	313	24.4	24.6	18	12.7	52%

NAME OF OPERATOR	TOTAL # OF SUBSCRIBERS	TOTAL # OF COMMUNITY UNITS	TOTAL # OF STATES SERVED	TOTAL # OF HEADENDS	# OF HEADENDS WITH LESS THAN 1,000 SUBSCRIBERS
Douglas Communications Corp. II	103,090	494	13	437	428
Galaxy Cablevision	54,887	200	6	129	112
MW1/USA Cablesystems, Inc.	37,334	484	16	443	443
Vantage Cable Associates, L.P.	30,737	126	7	126	123
Triax Communications Corp.	326,052	1,075	16	444	361
Buford Television, Inc.	77,206	260	8	168	154
Classic Cable	29,904	78	5	73	65
Midcontinent Media, Inc.	72,502	174	4	170	162
Star Cable Associates	60,279	150	6	62	33
Leonard Communications, Inc.	61,500	226	9	125	110
Phoenix Cable, Inc.	26,900	58	8	37	25

CERTIFICATE OF SERVICE

I, Peggy E. Gelinas, hereby certify that copies of the foregoing Reply Comments of Coalition of Small System Operators were mailed, by first class mail, postage prepaid this 28th day of January, 1993 to:

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